



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/22/0814

Re: Property at Viewfield, 1 The Square, Kintore, Inverurie, AB51 0UA (“the Property”)

Parties:

John Ross (Chemists) Ltd, 39 Station Road, Ellon, Aberdeenshire, AB41 9AR (“the Applicant”)

Ms Claire Johnston, Mr Martin McHendry, Viewfield, 1 The Square, Kintore, Inverurie, AB51 0UA (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Notice to Leave relied upon is invalid and cannot be relied upon and accordingly the application is dismissed

Introduction

1. The application is under rule 109 and section 51 of the Private Housing (Tenancies) (Scotland) Act 2016. The application seeks an eviction order.
2. Service of the application and intimation of the Case Management Discussion (CMD) was effected upon the respondents by Sheriff Officers on 26 July 2022.
3. Email submissions were received from the respondents by email dated 15 August 2022.

The hearing

4. The CMD took place by teleconference at 10.00 am on 31 August 2022.
5. The applicant was represented by Mr John Ross of the applicant company John Ross (Chemists) Ltd. He was accompanied by his wife Miss Carmen Harold. The named respondents both joined the teleconference personally and represented their own interests.

Findings and Reasons

6. The property is Viewfield, 1 The Square, Kintore, Inverurie AB51 0UA.
7. The applicant is John Ross (Chemists Ltd) who is the heritable proprietor and registered landlord. The respondents are Ms Claire Johnston and Mr Martin McHendry who are the tenants.
8. The parties entered into a private residential tenancy which commenced on 1 February 2020. The rent was stipulated at £650 per month.
9. The current eviction proceedings are based upon alleged antisocial behaviour. The ground relied upon is ground 14 contained within part 3 of schedule 3 to the 2016 Act.
10. Ground 14 as originally drafted was a mandatory ground for eviction. Since the coming into force of the Coronavirus (Scotland) Act 2020, all eviction grounds are discretionary.
11. The Notice to Leave which is relied upon is dated 21 February 2022. This is evidenced to have been served personally by Sheriff Officers in the hands of the first-named respondent on 21 February 2022. The Notice specified that an application would not be submitted to the tribunal for an eviction order before 21 March 2022.
12. The notice was not prepared with reference to section 62 of the Act. The provisions of section 62 require the total notice period to comprise the notice period itself – in this case a period of 28 days plus an additional 48 hours for deemed service plus one additional day. The additional 48 hours for deemed service relates to an assumption regarding the time that is ordinarily taken for service to take place. This is a rebuttable presumption however and given the evidence of the Sheriff Officers certification that service took place on

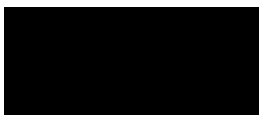
21 February 2022, this reduces the total notice period to one of 28 days plus one additional day. The Notice to Leave however was not prepared lawfully; it was one day short.

13. The essential requirements of a Notice to Leave, which are prescribed by section 62(1) have not all been adhered to, because subsection (b) has not been met. This is because the specified day contained within the Notice to Leave, said to be the day on which the landlord expects to become entitled to make an application for an Eviction Order to the First-tier Tribunal, is one day early. Mr Ross was afforded an adjournment to consider matters further and stated that he had received legal advice regarding the computation of the notice period and submitted that the notice period was not short. The tribunal rejected that submission as being unfounded.
14. The Tribunal considered the potential operation of section 73 of the 2016 Act which deals with minor errors in documents. Such section applies to errors which do not make the document invalid. Some errors however do make documents invalid. Section 73 does not apply to errors which materially affect the effect of the document. Section 105 of the 2016 Act contains an explanatory note to Section 73 which states that any errors in specified documents do not invalidate the document, if they are sufficiently minor that they do not materially alter the effect of the document. It is said that the purpose of section 73 is to ensure that a common-sense approach can be taken to meeting the requirements under the Act and that a party is not penalised for an obviously minor error. The protection applies equally to both landlords and tenants. Section 73(2)(d) makes specific reference to errors contained within Notices to Leave.
15. The fundamental requirements of a Notice to Leave are to provide information to the tenant as to why and when proceedings may be raised against them. The “why” element was specified. The “when” part of the notice is however defective and the Tribunal finds that this is materially so. Properly calculated, the first day the applicant could have made application to the First-tier Tribunal was 22 March 2022. The Notice specified the wrong day – 21 March 2022.
16. The Tribunal has had regard to decisions of the First-tier Tribunal in other determined cases on similar points. Though not binding on the Tribunal, these are persuasive and in any legal jurisdiction it is important that the public have confidence in the impartial decision-making of Courts and Tribunals and that the public can take comfort in knowing that they will be treated equally with other service users. The Tribunal has had specific regard to the decisions in FTS/HPC/EV/18/3231 and FTS/HPC/EV/19/3416. In the 3231 case the Notice to Leave specified the wrong date by 3 days. It was held to be invalid. In the 3416 case the Notice specified the wrong date by 1 day only. It was held to be invalid.

17. The Notice to Leave served upon the respondent in February does not specify “the day” on which the applicant was entitled to make an application for an Eviction Order to the First-tier Tribunal. It follows that the notice relied upon in this application is not a Notice to Leave in terms of Section 62(1) of the Act. One of the fundamental requirements clearly set out in the legislation at section 62(1) has not been met. Other erroneous references, mistakes and omissions are capable of being overlooked, but the four fundamental requirements in section 62(1) must be met precisely.
18. The Tribunal refers to and relies upon the reasoning provided by the Tribunal in the cases ending in 3231 and 3416.
19. It is well established law in Scotland that notices to quit must comply strictly with common law and statute, and the Tribunal’s view is that the same approach should apply to the statutory Notices to Leave required to be served on tenants under the 2016 Act.
20. The Tribunal determined that the Notice to Leave served upon the respondent in February 2022 is not valid. The error within the Notice is a fundamental one. It is not a minor error. Accordingly, it cannot be a Notice to Leave which qualifies for the purposes of Section 52(2) and (3) of the Act. This requires the Tribunal to have before it in an application for an Eviction Order, a Notice to Leave. The Notice to Leave is not valid and cannot be relied upon.
21. The amendments brought about by the Coronavirus (Scotland) Act 2020 which related to extended notice periods do not apply. The miscalculation in terms of the notice period did not arise due to the amendments brought about by the Coronavirus (Scotland) Act 2020. The notice period for the purposes of ground 14 has never been extended beyond 28 days and, as such, paragraph 10 of schedule 1 of the 2020 of the Act provides no relief to the applicant.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.



31 August 2022

Legal Member: Richard Mill

Date